

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

<b>In re:</b>  <b>W.R. GRACE &amp; CO., et al.,</b>  <b>Debtors.</b>	<b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b> <b>§</b>	<b>Chapter 11</b>  <b>Jointly Administered</b> <b>Case No. 01-01139 (JKF)</b>
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**FEE AUDITOR'S FINAL REPORT REGARDING FEE  
APPLICATION OF VENABLE LLP FOR THE THIRTY-FIRST,  
THIRTY-SECOND, AND THIRTY-THIRD INTERIM PERIODS**

This is the final report of Warren H. Smith & Associates, P.C., acting in its capacity as fee auditor in the above-captioned bankruptcy proceedings, regarding the Interim Fee Application of Venable LLP for the Thirty-First, Thirty-Second, and Thirty-Third Interim Periods (the “Application”).

**BACKGROUND**

1. Venable LLP (“Venable”) was originally retained on May 3, 2001, as an ordinary course professional (“OCP”) to provide legal services to the Debtors regarding employment, employee benefits, workers’ compensation, and corporate/securities law issues. On June 24, 2009, the Court entered its Order Authorizing the Retention and Employment of Venable LLP as Special Litigation Counsel to the Debtors retaining Venable effective as of the filing date of Venable’s retention application<sup>1</sup> and authorizing Venable to seek compensation for all of its outstanding fees and expenses in excess of its monthly OCP cap. In the Application, Venable seeks approval of fees

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<sup>1</sup>May 22, 2009.

totaling \$709,294.00<sup>2</sup> and expenses totaling \$6,405.06 for its services from November 1, 2008 through June 30, 2009 (the “Application Period”).

2. In conducting this audit and reaching the conclusions and recommendations contained herein, we reviewed in detail the Application in its entirety, including each of the time and expense entries included in the exhibits to the Application, for compliance with 11 U.S.C. § 330, Local Rule 2016-2 of the Local Rules of the United States Bankruptcy Court for the District of Delaware, Amended Effective February 1, 2009, and the United States Trustee Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses Filed Under 11 U.S.C. § 330, Issued January 30, 1996 (the “U.S. Trustee Guidelines”), as well as for consistency with precedent established in the United States Bankruptcy Court for the District of Delaware, the United States District Court for the District of Delaware, and the Third Circuit Court of Appeals. Based on our review, we served an initial report on Venable, and received a response from Venable, portions of which response are quoted herein.

## **DISCUSSION**

3. In our initial report, we noted a number of time entries which appeared to include non-working travel time. These time entries are listed on Exhibit “A.” According to Local Rule 2016-2(d)(viii): “Travel time during which no work is performed shall be separately described and may be billed at no more than 50% of regular hourly rates.” Thus, we asked Venable to indicate the amount of time devoted to non-working travel in each of these time entries, and to advise whether

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<sup>2</sup>Of this amount, Venable has already been paid fees and expenses totaling \$320,268.80 pursuant to the terms of the OCP Order. Venable’s fees and expenses in excess of amounts authorized by the OCP Order total \$395,430.26.

the required 50% discount had been applied to this time. Venable responded:

... As you requested, on (Response) Exhibit A attached hereto we have set forth the time devoted to non-working travel with respect to the specific time entries noted by the Auditor's Report. A 50% discount was not previously applied to these entries. Therefore, in accordance with Rule 2016-2(d)(iii) of the Local Rules for the United States Bankruptcy Court District of Delaware, we reduce our request for approval of fees for the Application Period as set forth in (Response) Exhibit A for a total reduction of \$2,699.00. We will apply a 50% discount to non-working travel time in future applications.


We appreciate Venable's response and recommend a reduction of \$2,699.00 in fees.

### **CONCLUSION**

4. Thus, we recommend approval of \$706,595.00 in fees (\$709,294.00 minus \$2,699.00) and \$6,405.06 in expenses for Venable's services for the Application Period.

Respectfully submitted,

**WARREN H. SMITH & ASSOCIATES, P.C.**

By:   
Warren H. Smith  
Texas State Bar No. 18757050

Republic Center  
325 N. St. Paul Street, Suite 1250  
Dallas, Texas 75201  
214-698-3868  
214-722-0081 (fax)  
whsmith@whsmithlaw.com

**FEE AUDITOR**

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document has been served by First Class United States mail to the attached service list on this 24<sup>th</sup> day of November, 2009.



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Warren H. Smith

**SERVICE LIST**

Notice Parties

**The Applicant**

G. Stewart Webb, Jr.  
Darek S. Bushnaq  
VENABLE LLP  
750 E. Pratt Street, Suite 900  
Baltimore, MD 21202

**The Debtors**

David B. Siegel, Esq.  
Sr. V.P. and Gen. Counsel  
W.R. Grace & Co.  
7500 Grace Drive  
Columbia, MD 21044

**Counsel for the Debtors**

James H.M. Sprayregen, Esq.  
Deanna Boll  
David Bernick  
Kirkland & Ellis  
200 East Randolph Drive  
Chicago, IL 60601

Laura Davis Jones, Esq.  
James R. O'Neill  
Pachulski, Stang, Ziehl & Jones LLP  
919 North Market Street, 17<sup>th</sup> Floor  
P.O. Box 8705  
Wilmington, DE 19899-8705

**Counsel for the Official Committee of  
Unsecured Creditors**

Lewis Kruger, Esq  
Stroock & Stroock & Lavan  
180 Maiden Lane  
New York, NY 10038-4982

Michael R. Lastowski, Esq.  
Duane Morris LLP  
1100 N. Market Street, Suite 1200  
Wilmington, De 19801-1246

**Counsel to the Official Committee of Property  
Damage Claimants**

Scott L. Baena, Esq  
Bilzin, Sumberg, Dunn, Baena, Price & Axelrod  
First Union Financial Center  
200 South Biscayne Boulevard, Suite 2500  
Miami, FL 33131

Michael B. Joseph, Esq.  
Ferry & Joseph, P.A.  
824 Market Street, Suite 904  
P.O. Box 1351  
Wilmington, DE 19899

**Counsel to the Official Committee of Personal  
Injury Claimants**

Elihu Inselbuch, Esq.  
Caplin & Drysdale  
375 Park Avenue, 35<sup>th</sup> Floor  
New York, NY 10152-3500

Marla R. Eskin  
Campbell & Levine, LLC  
Suite 300  
800 N. King Street  
Wilmington, DE 19801

**Official Committee of Equity Holders**

Gary M. Becker  
Kramer Levin Naftalis & Frankel  
1177 Avenue of the Americas  
New York, NY 10036

**United States Trustee**

David Klauder  
Office of the United States Trustee  
844 King Street, Suite 2311  
Wilmington, DE 19801

**EXHIBIT "A"**

MALLON. COLLEEN M.	11/17/2008	10.90	415.00	4,523.50	<b>TRAVEL TO AND FROM GRACE'S HEADQUARTERS IN COLUMBIA FOR INTERVIEWS;</b> PARTICIPATE IN INTERVIEWS OF EMPLOYEES OF WR. GRACE; MEETING WITH S. WEBB RE SAME; DRAFT LETTER TO OPPOSING COUNSEL RE WEBPAGE
MALLON, COLLEEN M.	11/18/2008	11.80	415.00	4,897.00	<b>TRAVEL TO AND FROM GRACE'S HEADQUARTERS IN COLUMBIA FOR INTERVIEWS;</b> PARTICIPATE IN INTERVIEWS; REVISE LETTER TO OPPOSING COUNSEL RE: WEBPAGE AND FINALIZE REVIEW DOCUMENTS FROM INTERNAL AUDIT RE: PATTI MIKESKA ISSUE; PREPARE FOR P. MIKESKA INTERVIEW
MALLON. COLLEEN M.	11/19/2008	7.90	415.00	3,278.50	PREPARE FOR INTERVIEW WITH P. MIKESKA; <b>TRAVEL TO AND FROM CURTIS BAY FACILITY;</b> PARTICIPATE IN INTERVIEWS; EDIT FINALIZE LETTER TO PLAINTIFF'S COUNSEL RE: WEBPAGE; MEETING WITH A. MAJOR RE: RESULTS OF INTERVIEWS AND NEED FOR ASSISTANCE TO REVIEW DOCUMENTS
MALLON. COLLEEN M.	11/24/2008	9.20	415.00	3,818.00	<b>TRAVEL TO AND FROM GRACE'S COLUMBIA HEADQUARTERS;</b> PARTICIPATE IN INTERVIEW WITH M. BAKER; REVIEW DOCUMENTS IN M. BAKER'S BINDER; ANALYSIS/STRATEGY
MALLON. COLLEEN M.	2/5/2009	7.80	415.00	3,237.00	REVIEW EMAILS INVOLVING P. MIKESKA ON CD PROVIDED BY FORENSIC EXAMINER; PREPARE FOR J. HUNTER INTERVIEW; <b>TRAVEL TO AND FROM GRACE'S COLUMBIA OFFICE FOR J. HUNTER INTERVIEW;</b> PARTICIPATE IN INTERVIEW; MEETINGS WITH G.S. WEBB RE: SAME AND ITEMS TO COVER WITH J. HUNTER; MEETING WITH A. MAJOR RE: DOCUMENT REVIEW; REVISE LETTER TO M. LIEBOWITZ E: DISCOVERY ISSUES
WEBB. G. STEWART, JR.	2/17/2009	0.70	635.00	444.50	<b>TRAVEL TO/FROM TIMONIUM FOR MEETING WITH POTENTIAL EXPERT</b>
MALLON, COLLEEN M.	3/6/2009	5.90	415.00	2,448.50	<b>TRAVEL TO AND FROM GRACE'S COLUMBIA OFFICE;</b>

					PARTICIPATE IN EMPLOYEE INTERVIEWS; MEETING WITH S. WEBB RE: SAME AND PLAINTIFF'S DISCOVERY RESPONSES; MEETING WITH J. COLLINS RE CREATING P. MIKESKA BINDERS AND COMPARISON OF P. CARD SPREADSHEETS; MEETING WITH M. SWINBURNE RE: PRODUCTION; DRAFT COVER LETTER RE: SUPPLEMENTAL DOCUMENT PRODUCTION AND FINALIZE SAME; TELEPHONE CALL WITH N. BAGWANDEEN RE: GRACE'S PRODUCTION
MALLON, COLLEEN M.	3/18/2009	9.20	415.00	3,818.00	<b>TRAVEL TO AND FROM GRACE'S COLUMBIA OFFICE;</b> PARTICIPATE IN INTERVIEWS OF WITNESSES; EDIT/REVISE LETTER TO PLAINTIFF'S COUNSEL RE: DISCOVERY RESPONSES; MEETING WITH M. SWINBURNE RE: MATCHING UP GL ACCOUNTS
MALLON, COLLEEN M.	3/31/2009	6.90	415.00	2,863.50	REVIEW DISCOVERY LETTERS EXCHANGED BETWEEN PARTIES AND WRITTEN DISCOVERY ANSWERS IN PREPARATION FOR MEET AND CONFER WITH PLAINTIFFS; MEETING WITH S. WEBB RE SAME: <b>TRAVEL TO AND FROM PLAINTIFF'S OFFICE;</b> PARTICIPATE IN MEET AND CONFER WITH COUNSEL FOR PLAINTIFF; DRAFT FOLLOW UP NOTES FROM MEETING; FOLLOW UP WITH M. BAKER RE: OPEN ITEMS; EDIT/REVISE CONFIDENTIALITY AGREEMENT AND FORWARD SAME TO PLAINTIFF
MALLON, COLLEEN M.	6/16/2009	6.60	415.00	2,739.00	<b>TRAVEL TO AND FROM GRACE'S HEADQUARTERS IN COLUMBIA;</b> MEETINGS WITH M. BAKER, M. BLESSING, B. KUCHINSKY, R. FINKE, S. WEBB AND EXPERT RE: M. BAKER'S BINDER, GRACE'S ACCOUNTING SYSTEM AND RELATED ITEMS; PREPARE FOR SAME; WORK ON FOLLOW-UP ISSUES AND MEETING WITH S. WEBB RE: STRATEGY
WEBB, G. STEWART, JR.	6/16/2009	4.00	635.00	2,540.00	<b>TRAVEL TO/FROM GRACE FOR MEETING;</b> MEETING WITH CLIENT EXPERT AND FINANCIAL PEOPLE